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PLR-141904-07

Date:

November 30, 2007

LEGEND

Distributing 1 =

Distributing 1 SAG =

Distributing 2 =

Distributing 2 SAG =

Distributing 3 =

Distributing 3 SAG =

Controlled 1 =

Controlled 1 SAG =

Controlled 2 =

PLR-141904-07

2

Controlled 2 SAG =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

FSub =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

FLLC =

Business A =

Business B =

Asset 1 =

Asset 2 =

Asset 3 =

Asset 4 =

Asset 5 =

Asset 6 =

Asset 7 =

Asset 8 =

Asset 9 =

Asset 10 =

Asset 11 =

Asset 12 =

Asset 13 =

Contracts =

X =

Investments =

Shareholder A =

a =

b =

c =

d =

e =

f =

Dear

This letter responds to your September 14, 2007 letter requesting rulings as to the federal income tax consequences of the Proposed Transaction (defined below). The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no determination has been made regarding whether the Distributions (defined below) (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) are

part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing 1 is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Consolidated Group"). Distributing 1 has outstanding two series of voting common stock: Class A Common Stock and Class B Common Stock. Class A Common Stock is publicly traded and listed on an exchange. There is currently no trading market for the Class B Common Stock. Holders of Class B Common Stock are entitled to a votes per share. Each share of Class B Common Stock is convertible, at the option of the holder, into one share of Class A Common Stock. Distributing 1 also has authorized Class C Common Stock; no shares of the Class C Common Stock are issued or outstanding. Shareholder A, Distributing 1's Chairman of the Board and Chief Executive Officer, is deemed to be a beneficial owner of b percent of the Class A Common Stock for securities law purposes. Shareholder A also owns c percent of the Class B Common Stock.

Distributing 1 wholly owns Distributing 2, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, FSub and FLLC. Distributing 1 also owns a d percent interest in LLC 1 and a e percent interest in Sub 16. Distributing 2 wholly owns Distributing 3 and Sub 11. Distributing 3 wholly owns Sub 12, Controlled 2, LLC 2, LLC 3 and LLC 4. LLC 2 wholly owns Sub 13, Sub 14 and LLC 5. Sub 14 wholly owns Sub 15. Each of LLC 2, LLC 3, LLC 4, LLC 5 and FLLC is an entity intended to be disregarded as separate from its owner for federal income tax purposes under Treas. Reg. § 301.7701-3 of the Procedure and Administrative Regulations (a "disregarded entity").

Distributing 1, Distributing 2, Distributing 3, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Controlled 2, Sub 13, Sub 14 and Sub 15 are members of the Consolidated Group.

The External Distribution is being carried out for the following corporate business purposes (collectively, the "Business Purpose"): (i) permit the creation of effective management incentives tied to the relevant company's performance and increasing the ability to attract and retain personnel; (ii) creating opportunities to effectively develop and finance expansion plans; (iii) increasing the market value of the companies; (iv) allowing each company to separately pursue the business strategies that best suit its long-term interest; and (v) creating separate companies that have different financial characteristics, which may appeal to different investor bases. The First Internal Distribution and Second Internal Distribution are being carried out for the corporate business purposes of facilitating the External Distribution and the Business Purpose.

Certain employees of the Consolidated Group currently have options (each, a “Distributing 1 Option”) to purchase shares of Distributing common stock. It is anticipated that in connection with the Distributions, the Distributing 1 Options will be divided into two options as follows: (i) an option (each, a “Controlled 1 Option”) to purchase shares of the same series of Controlled 1 common stock as the series of Distributing 1 common stock for which the outstanding Distributing 1 Option is exercisable; and (ii) an option (each, an “Adjusted Distributing 1 Option”) to purchase shares of the same series of Distributing 1 common stock as the series of Distributing 1 common stock for which the outstanding Distributing 1 Option is exercisable. It is anticipated that the Controlled 1 Options will be exercisable for the number of shares of such series of Controlled 1 common stock that would have been issued in the External Distribution in respect of the shares of Distributing 1 common stock subject to the applicable Distributing 1 Option, if such Distributing 1 Option had been exercised in full immediately prior to the record date for the External Distribution.

Certain current and former employees and directors of Distributing 1 and its subsidiaries hold restricted stock units with respect to Class A Common stock (each, a “Distributing 1 Restricted Stock Unit”). In connection with the Transaction, each Distributing 1 Restricted Stock Unit will be replaced with a new Distributing 1 Restricted Stock Unit (“New Distributing 1 Restricted Stock Unit”) and a number of restricted stock units with respect to Controlled 1 Class A Common Stock (each, a “Controlled 1 Restricted Stock Unit”) equal to the number of shares of Controlled 1 Class A Common Stock that the holder of the restricted stock unit would have received in the External Distribution had the Distributing 1 Restricted Stock Units represented outstanding shares of Distributing 1 Class A Common Stock. Holders of Distributing 1’s common stock issued pursuant to the Distributing 1 stock incentive plan and subject to restrictions on sale and transfer (“Distributing 1 Restricted Stock”) will receive Controlled 1 common stock subject to restrictions similar to those of their Distributing 1 Restricted Stock in the External Distribution (“Controlled 1 Restricted Stock”).

The Distributing 1 SAG, Distributing 2 SAG and Distributing 3 SAG are directly engaged in Business A and Business B. The Controlled 2 SAG is directly engaged in Business B. Financial information submitted by Distributing 1, Distributing 2, Distributing 3 and Controlled 2 indicates that Business A (as conducted by the Distributing 1 SAG, Distributing 2 SAG and Distributing 3 SAG) and Business B (as conducted by the Distributing 1 SAG, Distributing 2 SAG, Distributing 3 SAG and Controlled 2 SAG) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what is represented to be a valid business purpose, the following series of transactions is proposed (the “Proposed Transaction”):

- (i) Distributing 1 contributes to Distributing 2: (a) all of the stock of Sub 1; and (b) all of the stock of Sub 5.
- (ii) Sub 1 is converted into a single member limited liability company ("Sub 1 LLC"), with the result that Sub 1 is disregarded as an entity separate from its owner, Distributing 2.
- (iii) Sub 1 LLC distributes Asset 1 to Distributing 2. Because Asset 1 will be treated for federal income tax purposes as owned directly by Distributing 2 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (iv) Distributing 2 contributes to Distributing 3 all of the stock of Sub 5 and all of its membership interests in Sub 1 LLC.
- (v) Sub 3 sells Asset 2 to LLC 2.
- (vi) Sub 14 is converted into a single member limited liability company ("Sub 14 LLC"), with the result that Sub 14 LLC is disregarded as an entity separate from its owner, Distributing 3.
- (vii) Sub 14 LLC forms Controlled 1 as a new wholly-owned subsidiary corporation and contributes to Controlled 1: (a) Asset 3; (b) Asset 4; (c) Asset 5; (d) Asset 6; (e) Asset 13; (f) all of the stock of Sub 15; and (g) Asset 7 (the "Sub 14 LLC Contribution").
- (viii) Sub 14 LLC distributes all of the stock of Controlled 1 to LLC 2. Because the stock of Controlled 1 will be treated for federal income tax purposes as owned directly by Distributing 3 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (ix) LLC 5 distributes Asset 8 and certain patents (the "LLC 5 Patents") to LLC 2. Because Asset 8 and the LLC 5 Patents will be treated for federal income tax purposes as owned directly by Distributing 3 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (x) Sub 13 is converted into a single member limited liability company ("Sub 13 LLC"), with the result that Sub 13 LLC is disregarded as an entity separate from its owner, Distributing 3.
- (xi) Sub 13 LLC forms LLC 6 and assigns certain Contracts to LLC 6.
- (xii) Sub 13 LLC distributes all of its membership interest in LLC 6 to LLC 2. Because the membership interest in LLC 6 will be treated for federal income tax purposes as owned directly by Distributing 3 before and after this distribution, this step will be disregarded for federal income tax purposes.

- (xiii) LLC 2 assigns certain Contracts to LLC 6.
- (xiv) LLC 2 contributes to Controlled 1: (a) a portion of its membership interest in LLC 6; (b) Asset 10 (including Asset 8); (c) certain patents and the LLC 5 Patents; and (d) certain other assets.
- (xv) LLC 2 distributes all of the stock of Controlled 1 to Distributing 3. Because the stock of Controlled 1 will be treated for federal income tax purposes as owned directly by Distributing 3 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (xvi) LLC 3 distributes certain assets, including all rights in various foreign jurisdictions to the X trade name or trademark ("LLC 3 Assets") to Distributing 3. Because the LLC 3 Assets will be treated for federal income tax purposes as owned directly by Distributing 3 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (xvii) Distributing 3 contributes to Controlled 2: (a) all of the stock of Controlled 1; (b) all of the stock of Sub 12 held by Distributing 3; (c) LLC 3 Assets; and (d) its membership interest in LLC 4 (the "First Contribution").
- (xviii) Distributing 3 distributes all of the stock of Controlled 2 to Distributing 2 (the "First Internal Distribution").
- (xix) Controlled 2 is converted into a single member limited liability company ("Controlled 2 LLC") with the result that Controlled 2 LLC is disregarded as an entity separate from its owner, Distributing 2
- (xx) Sub 11 is converted into a single member limited liability company ("Sub 11 LLC"), with the result that Sub 11 LLC is disregarded as an entity separate from its owner, Distributing 2.
- (xxi) Sub 11 distributes Asset 11 and Asset 12 to Distributing 2 ("Sub 11 Distribution"). Because Asset 11 and Asset 12 will be treated for federal income tax purposes as owned directly by Distributing 2 before and after this distribution, this step will be disregarded for federal income tax purposes.
- (xxii) Distributing 2 contributes (a) Asset 1; (b) Asset 11; (c) Asset 12; and (c) all of the membership interests in Controlled 2 LLC to Controlled 1 (the "Distributing 2 Contribution").
- (xxiii) Distributing 2 distributes all of the stock of Controlled 1 to Distributing 1 (the "Second Internal Distribution").
- (xxiv) Distributing 1 contributes the following to Controlled 1: (a) all of its stock in Sub 16; (b) all of its membership interest in LLC 1; (c) all of the preferred and

common stock of FSub; (d) all of the stock of Sub 2; (e) all of the stock of Sub 3; (f) all of the stock of Sub 7; (g) all of the stock of Sub 4; (h) all of the stock of Sub 8; (i) Asset 9; (j) certain receivables from Sub 16 and LLC 1; (k) all of the stock of Sub 6; (l) all of the stock of Sub 9; (m) all of the stock of Sub 10; (n) all rights in the United States to the X trade name or trademark; (o) cash in the amount of f dollars; (p) certain intellectual property; and all of its ownership interest in the Investments (the "Distributing 1 Contribution").

- (xxv) Distributing 1 distributes all of the stock of Controlled 1 pro rata to its stockholders (the "External Distribution"). Holders of the Class A Common Stock will receive Controlled 1's Class A Common Stock and holders of the Class B Common Stock will receive Controlled 1's Class B Common Stock. Fractional shares of Controlled 1's Class A Common Stock will be aggregated and sold by the transfer agent on the open market. The proceeds from the sale will be paid to stockholders entitled to receive fractional shares in the External Distribution.

It is intended that Distributing 1 and/or its subsidiaries and Controlled 1 and/or its subsidiaries will enter into various agreements in connection with the Distributions that will result in continuing transactions between Distributing and/or its subsidiaries and Controlled 1. These agreements include a tax indemnity agreement (the "Tax Indemnity Agreement") as well as other transitional ancillary agreements (together with the Tax Indemnity Agreement, the "Ancillary Agreements").

Representations

In connection with the First Contribution and the First Internal Distribution (steps (xvii) and (xviii)), the following representations are made:

- (a) The indebtedness owed by Controlled 2 (the controlled corporation) to Distributing 3 (the distributing corporation) after the distribution of the Controlled 2 stock will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 3 (the distributing corporation) will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.
- (c) Distributing 3 and Controlled 2 will each treat all members of its respective separate affiliated group as defined in section 355(b)(3)(B) (hereafter "SAG") as one corporation for purposes of providing information as to whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (d) The five years of financial information submitted on behalf of Business A conducted directly by the members of the Distributing 3 SAG is representative of its present operations and, with regard to such business, there have been no

substantial operational changes since the date of the last financial statements submitted.

- (e) The five years of financial information submitted on behalf of Business B conducted directly by the members of the Controlled 2 SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the First Internal Distribution, the Distributing 3 SAG and the Controlled 2 SAG will each continue the active conduct of its business, independently (except as contemplated by the Ancillary Agreements) and with its separate employees.
- (g) The distribution of the stock, or stock and securities, of Controlled 2 (the controlled corporation) is carried out for the corporate business purposes of facilitating the External Distribution and the Business Purpose. The distribution of the stock, or stock and securities, of Controlled 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) The First Contribution and the First Internal Distribution are not used principally as devices for the distribution of the earnings and profits of Distributing 3 (the distributing corporation) or Controlled 2 (the controlled corporation) or both.
- (i) The total fair market value of the assets that Distributing 3 will transfer to Controlled 2 in the First Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled 2 by Distributing 3 that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 3 from Controlled 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.
- (j) The total fair market value of the assets transferred to Controlled 2 by Distributing 3 in the First Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.
- (k) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 by Distributing 3 each equals or exceeds the sum of the liabilities assumed (within the meaning of §357(d)) by Controlled 2 plus any liabilities to which the transferred assets are subject.

- (l) The liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the First Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (m) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 3 or Controlled 2, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) Distributing 3 and Controlled 2 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (n) The First Internal Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 3 or Controlled 2 (including any predecessor or successor of either corporation).
- (o) To the extent that any of the transfers pursuant to the First Internal Distribution constitutes an early disposition of property with respect to which any investment credit has been (or will be) claimed under § 46, the income tax liability for the taxable year in which the investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect the early disposition of the property.
- (p) Distributing 3 (as distributing corporation) neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the First Contribution and First Internal Distribution.
- (q) Except for trade payables and advances arising in the ordinary course of business, no intercorporate debt will exist between Distributing 3 (as the distributing corporation) and Controlled 2 (as the controlled corporation) at the time of, or subsequent to, the distribution of Controlled 2 stock.
- (r) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 3's (as distributing corporation) excess loss account, if any, with respect to Controlled 2

(as controlled corporation) stock will be included in income immediately before the External Distribution (See § 1.1502-19).

- (s) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (t) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Controlled 2 stock, that was either: (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing 3 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (u) Payments made in connection with all continuing transactions, if any, between Distributing 3 (as the distributing corporation) and Controlled 2 (as the controlled corporation) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) No two parties to the First Contribution and First Internal Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

In connection with the Distributing 2 Contribution and the Second Internal Distribution (steps (xxii) and (xxiii)), the following representations are made:

- (a) The indebtedness owed by Controlled 1 (the controlled corporation) to Distributing 2 (the distributing corporation) after the distribution of the Controlled 1 stock will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 2 (the distributing corporation) will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (c) Distributing 2 and Controlled 1 will each treat all members of its respective SAG as one corporation for purposes of providing information as to whether it meets

the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

- (d) The five years of financial information submitted on behalf of Business A conducted directly by the members of the Distributing 2 SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B conducted directly by the members of the Controlled 1 SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the Second Internal Distribution, the Distributing 2 SAG and the Controlled 1 SAG will each continue the active conduct of its business, independently (except as contemplated by the Ancillary Agreements) and with its separate employees.
- (g) The distribution of the stock, or stock and securities, of Controlled 1 (the controlled corporation) is carried out for the corporate business purposes of facilitating the External Distribution and the Business Purpose. The distribution of the stock, or stock and securities, of Controlled 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) The Distributing 2 Contribution and the Second Internal Distribution are not used principally as devices for the distribution of the earnings and profits of Distributing 2 (the distributing corporation) or Controlled 1 (the controlled corporation) or both.
- (i) The total fair market value of the assets that Distributing 2 will transfer to Controlled 1 in the Distributing 2 Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled 1 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 from Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

- (j) The total fair market value of the assets transferred to Controlled 1 by Distributing 2 in the Distributing 2 Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.
- (k) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 by Distributing 2 each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled 1 plus any liabilities to which the transferred assets are subject.
- (l) The liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in the Distributing 2 Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (m) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 2 or Controlled 1, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) Distributing 2 and Controlled 1 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (n) The Second Internal Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 1 (including any predecessor or successor of either corporation).
- (o) To the extent that any of the transfers pursuant to the Second Internal Distribution constitutes an early disposition of property with respect to which any investment credit has been (or will be) claimed under § 46, the income tax liability for the taxable year in which the investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect the early disposition of the property.
- (p) Distributing 2 (as distributing corporation) neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distributing 2 Contribution and Second Internal Distribution.
- (q) Except for trade payables and advances arising in the ordinary course of business, no intercorporate debt will exist between Distributing 2 (as the

distributing corporation) and Controlled 1 (as the controlled corporation) at the time of, or subsequent to, the distribution of Controlled 1 stock.

- (r) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's (as the distributing corporation) excess loss account, if any, with respect to Controlled 1 (as the controlled corporation) stock will be included in income immediately before the External Distribution (See § 1.1502-19).
- (s) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (t) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Controlled 1 stock, that was either: (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (u) Payments made in connection with all continuing transactions, if any, between Distributing 2 (as the distributing corporation) and Controlled 1 (as the controlled corporation) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) No two parties to the Distributing 2 Contribution and Second Internal Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

In connection with the Distributing 1 Contribution and the External Distribution (steps (xxiv) and (xxv)), the following representations are made:

- (a) The indebtedness owed by Controlled 1 (the controlled corporation) to Distributing 1 (the distributing corporation) after the distribution of the Controlled 1 stock will not constitute stock or securities.
- (b) Other than the Controlled 1 Options, the Controlled 1 Restricted Stock and the Controlled 1 Restricted Stock Units, no part of the consideration to be distributed by Distributing 1 (the distributing corporation) will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) Distributing 1 and Controlled 1 will each treat all members of its respective SAG as one corporation for purposes of providing information as to whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (d) The five years of financial information submitted on behalf of Business A conducted directly by the members of the Distributing 1 SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B conducted directly by the members of the Controlled 1 SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the External Distribution, the Distributing 1 SAG and the Controlled 1 SAG will each continue the active conduct of its business, independently (except as contemplated by the Ancillary Agreements) and with its separate employees.
- (g) The distribution of the stock, or stock and securities, of Controlled 1 (the controlled corporation) is carried out for the Business Purpose. The distribution of the stock, or stock and securities, of Controlled 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) The Distributing 1 Contribution and the External Distribution are not used principally as devices for the distribution of the earnings and profits of Distributing 1 (the distributing corporation) or Controlled 1 (the controlled corporation) or both.
- (i) The payment of cash in lieu of fractional shares of Controlled 1 is solely for the purpose of avoiding the expense and inconvenience to Controlled 1 of issuing fractional shares and does not represent separately bargained for consideration. The total cash consideration to be paid to the stockholders of Distributing 1 in lieu

of fractional shares is not expected to exceed one percent of the total consideration that will be distributed in the External Distribution. The fractional share interests will be aggregated, and no stockholder of Distributing 1 will receive cash in an amount equal or greater than the value of one full share of Controlled 1 stock.

- (j) The total fair market value of the assets that Distributing 1 will transfer to Controlled 1 in the Distributing 1 Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 from Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.
- (k) The total fair market value of the assets transferred to Controlled 1 by Distributing 1 in the Distributing 1 Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.
- (l) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 by Distributing 1 each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled 1 plus any liabilities to which the transferred assets are subject.
- (m) The liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in the Distributing 1 Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (n) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 1 or Controlled 1, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) Distributing 1 and Controlled 1 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (o) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest

(within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of either corporation).

- (p) To the extent that any of the transfers pursuant to the External Distribution constitutes an early disposition of property with respect to which any investment credit has been (or will be) claimed under § 46, the income tax liability for the taxable year in which the investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to Section 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect the early disposition of the property.
- (q) Distributing 1 (as the distributing corporation) neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distributing 1 Contribution and External Distribution.
- (r) Except for trade payables and advances arising in the ordinary course of business, no intercorporate debt will exist between Distributing 1 (as the distributing corporation) and Controlled 1 (as the controlled corporation) at the time of, or subsequent to, the distribution of Controlled 1 stock.
- (s) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and §1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 1's (as the distributing corporation) excess loss account, if any, with respect to Controlled 1 (as the controlled corporation) stock will be included in income immediately before the External Distribution (See § 1.1502-19).
- (t) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (u) For purposes of section 355(d), immediately after the distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Controlled 1 stock, that was either: (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution or

- (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.
- (v) Payments made in connection with all continuing transactions, if any, between Distributing 1 (as the distributing corporation) and Controlled 1 (as the controlled corporation) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (w) No two parties to the External Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (x) At the time of the External Distribution, Controlled 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Controlled 1 that, if exercised or converted, would affect Distributing 1 shareholders' retention of control of Controlled 1, as defined in Section 368(c).
- (y) Neither Distributing 1 nor Controlled 1 will be a United States real property holding corporation ("USRPHC") (as defined in § 897(c)(2)) immediately after the External Distribution. Distributing 1 has not been a USRPHC at any time during the five-year period ending on the date of the External Distribution.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows on the First Contribution and the First Internal Distribution (as described in steps (xvii) and (xviii)):

- (1) The First Contribution and the First Internal Distribution will, collectively, qualify as a "reorganization" within the meaning of Section 368(a)(1)(D). Distributing 3 and Controlled 2 each will be a "party to the reorganization" within the meaning of Section 368(b).
- (2) No gain or loss will be recognized by Distributing 3 with respect to the First Contribution. (Sections 357 and 361(a)).
- (3) No gain or loss will be recognized by Controlled 2 with respect to the First Contribution. (Section 1032(a)).
- (4) Controlled 2's basis in each applicable asset received from Distributing 3 will be the same as the basis of that asset in the hands of Distributing 3 immediately before the First Contribution. (Section 362(b)).

- (5) Controlled 2's holding period for each applicable asset received from Distributing 3 will include the period during which those assets were held by Distributing 3. (Section 1223(2)).
- (6) No gain or loss will be recognized by Distributing 3 with respect to the distribution of the Controlled 2 common stock to Distributing 2. (Sections 361(c) and 355(c)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 upon the receipt of the Controlled 2 common stock in the First Internal Distribution. (Section 355(a)(1)).
- (8) Distributing 2's basis in a share of Distributing 3 stock (as adjusted under Treas. Reg. § 1.358-1) shall be allocated between the share of Distributing 3 stock with respect to which the distribution is made and the share or shares of Controlled 2 stock (or allocable portions thereof) received with respect to the share of Distributing 3 stock in proportion to their fair market values. If one share of Controlled 2 stock is received in respect of more than one share of Distributing 3 stock, the basis of each share of Distributing 3 stock must be allocated to the shares of Controlled 2 stock received in a manner that reflects that, to the extent possible, a share of Controlled 2 stock is received in respect of shares of Distributing 3 stock acquired on the same date and at the same price. If Distributing 2 purchased or acquired shares of Distributing 3 stock on different dates or at different prices and is not able to identify which particular share of Controlled 2 stock (or portion thereof) is received with respect to a particular share of Distributing 3 stock, Distributing 2 may designate which particular share of Controlled 2 stock (or portion thereof) is received with respect to a particular share of Distributing 3 stock, provided the designation is consistent with the terms of the distribution.
- (9) The holding period of the Controlled 2 stock in the hands of Distributing 2 will include the holding period of the Distributing 3 stock with respect to which the First Internal Distribution will be made, provided the Distributing 3 stock is held as a capital asset by Distributing 2 on the date of the First Internal Distribution. (Section 1223(1)).
- (10) Earnings and profits will be allocated between Distributing 3 and Controlled 2 in accordance with § 312(h), Treas. Reg. §1.1502-33(e)(3), and Treas. Reg. § 1.312-10(a).

Based solely on the information submitted and the representations set forth above, we rule as follows on the Distributing 2 Contribution and the Second Internal Distribution (as described in steps (xxii) and (xxiii)):

- (11) The Distributing 2 Contribution and the Second Internal Distribution will, collectively, qualify as a “reorganization” within the meaning of Section 368(a)(1)(D). Distributing 2 and Controlled 1 each will be a “party to the reorganization” within the meaning of Section 368(b).
- (12) No gain or loss will be recognized by Distributing 2 with respect to the Distributing 2 Contribution. (Sections 357 and 361(a)).
- (13) No gain or loss will be recognized by Controlled 1 with respect to the Distributing 2 Contribution. (Section 1032(a)).
- (14) Controlled 1's basis in each applicable asset received from Distributing 2 will be the same as the basis of that asset in the hands of Distributing 2 immediately before the Distributing 2 Contribution. (Section 362(b)).
- (15) Controlled 1's holding period for each applicable asset received from Distributing 2 will include the period during which those assets were held by Distributing 2. (Section 1223(2)).
- (16) No gain or loss will be recognized by Distributing 2 with respect to the distribution of the Controlled 1 common stock to Distributing 1. (Sections 361(c) and 355(c)).
- (17) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 1 upon the receipt of the Controlled 1 common stock in the Second Internal Distribution. (Section 355(a)(1)).
- (18) Distributing 1's basis in a share of Distributing 2 stock (as adjusted under Treas. Reg. § 1.358-1) shall be allocated between the share of Distributing 2 stock with respect to which the distribution is made and the share or shares of Controlled 1 stock (or allocable portions thereof) received with respect to the share of Distributing 2 stock in proportion to their fair market values. If one share of Controlled 1 stock is received in respect of more than one share of Distributing 2 stock, the basis of each share of Distributing 2 stock must be allocated to the shares of Controlled 1 stock received in a manner that reflects that, to the extent possible, a share of Controlled 1 stock is received in respect of shares of Distributing 2 stock acquired on the same date and at the same price. If Distributing 1 purchased or acquired shares of Distributing 2 stock on different dates or at different prices and is not able to identify which particular share of Controlled 1 stock (or portion thereof) is received with respect to a particular share of Distributing 2 stock, Distributing 1 may designate which particular share of Controlled 1 stock (or portion thereof) is received with respect to a particular share of Distributing 2 stock, provided the designation is consistent with the terms of the distribution.

- (19) The holding period of the Controlled 1 stock in the hands of Distributing 1 will include the holding period of the Distributing 2 stock with respect to which the Second Internal Distribution will be made, provided the Distributing 2 stock is held as a capital asset by Distributing 1 on the date of the Second Internal Distribution. (Section 1223(1)).
- (20) Earnings and profits will be allocated between Distributing 2 and Controlled 1 in accordance with § 312(h), Treas. Reg. §1.1502-33(e)(3), and Treas. Reg. § 1.312-10(a).

Based solely on the information submitted and the representations set forth above, we rule as follows on the Distributing 1 Contribution and the External Distribution (as described in steps (xxiv) and (xxv)):

- (21) The Distributing 1 Contribution and the External Distribution will, collectively, qualify as a “reorganization” within the meaning of Section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be a “party to the reorganization” within the meaning of Section 368(b).
- (22) No gain or loss will be recognized by Distributing 1 with respect to the Distributing 1 Contribution. (Sections 357 and 361(a)).
- (23) No gain or loss will be recognized by Controlled 1 with respect to the Distributing 1 Contribution. (Section 1032(a)).
- (24) Controlled 1's basis in each applicable asset received from Distributing 1 will be the same as the basis of that asset in the hands of Distributing 1 immediately before the Distributing 1 Contribution. (Section 362(b)).
- (25) Controlled 1's holding period for each applicable asset received from Distributing 1 will include the period during which those assets were held by Distributing 1. (Section 1223(2)).
- (26) No gain or loss will be recognized by Distributing 1 with respect to the distribution of the Controlled 1 common stock to the stockholders of Distributing 1. (Sections 361(c) and 355(c)).
- (27) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the stockholders of Distributing 1 upon the receipt of the Controlled 1 common stock in the External Distribution. (Section 355(a)(1)).

- (28) Each Distributing 1 shareholder's basis in a share of Distributing 1 stock (as adjusted under Treas. Reg. § 1.358-1) shall be allocated between the share of Distributing 1 stock with respect to which the distribution is made and the share or shares of Controlled 1 stock (or allocable portions thereof) received with respect to the share of Distributing 1 stock in proportion to their fair market values. If one share of Controlled 1 stock is received in respect of more than one share of Distributing 1 stock or if a fraction of a share is received, the basis of each share of Distributing 1 stock must be allocated to the shares of Controlled 1 stock received in a manner that reflects that, to the extent possible, a share of Controlled 1 stock is received in respect of shares of Distributing 1 stock acquired on the same date and at the same price. If a Distributing 1 shareholder that purchased or acquired shares of Distributing 1 stock on different dates or at different prices is not able to identify which particular share of Controlled 1 stock (or portion thereof) is received with respect to a particular share of Distributing 1 stock, the shareholder may designate which particular share of Controlled 1 stock (or portion thereof) is received with respect to a particular share of Distributing 1 stock, provided the designation is consistent with the terms of the distribution.
- (29) The holding period of the Controlled 1 stock in the hands of the Distributing 1 shareholders (including any fractional share interest to which the Distributing 1 shareholders may be entitled) will include the holding period of the Distributing 1 stock with respect to which the External Distribution will be made, provided the Distributing 1 stock is held as a capital asset by Distributing 1 shareholders on the date of the External Distribution. (Section 1223(1)).
- (30) Earnings and Profits will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h), Treas. Reg. § 1.1502-33(e)(3), and Treas. Reg. § 1.312-10(a).
- (31) Payments made by and between Distributing 1 and Controlled 1 under the Tax Indemnity Agreements regarding liabilities that (i) relate to periods ending on or before the Distributions, and (ii) do not become fixed and ascertainable until after the Distributions, will be treated as occurring immediately before the Distributions. See *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev Rul. 83-73, 1983-1 C.B. 84.
- (32) A Distributing 1 shareholder who receives cash in lieu of a fractional share (if any) of Controlled 1 stock will recognize gain measured by the basis of the fractional share received, as determined above in ruling (28), and the amount of the cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the distribution. (Sections 1221 and 1222).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or the Federal Tax Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distributions are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. 1.355-2(d));
- (iii) Whether the Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in the distributing or controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. §1.355-7));
- (iv) The Federal income tax consequences of steps (ii), (vi), (x), (xix) and (xx) of the Proposed Transaction;
- (v) The Federal income tax and employment tax consequences of the replacement of Distributing 1 Options with Controlled 1 Options and Adjusted Distributing 1 Options;
- (vi) The Federal income tax consequences of the Sub 14 LLC Contribution in step (vii) of the Proposed Transaction;
- (vii) Whether LLC 2's contribution of certain patents and the LLC 5 patents to Controlled 1 in step (xiv) of the Proposed Transaction constitutes a transfer of property. (see Rev. Rul. 69-156, 1969-1 C.B. 101);
- (viii) The Federal income tax and employment tax consequences of the replacement of Distributing 1 Restricted Stock Units with New Distributing 1 Restricted Stock Units and Controlled 1 Restricted Stock Units; and
- (ix) The Federal income and employment tax consequences of the receipt of Controlled 1 Restricted Stock by the holders of Distributing 1 Restricted Stock.

Procedural Statements

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

George R. Johnson

George R. Johnson
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: